

TEXAS ETHICS COMMISSION
P.O. Box 12070, Austin, Texas 78711-2070
(512) 463-5800

Chris Flood, Chair
Patrick W. Mizell, Vice Chair
Randall H. Erben
Sean Gorman

Geanie W. Morrison
Richard S. Schmidt
Joseph O. Slovacek
Mark Strama

MEETING AGENDA

Date and Time:	9:00 a.m., Wednesday, September 17, 2025
Location:	Room E1.014, Capitol Extension, Austin, Texas

**INFORMATION ON HOW TO VIEW AND/OR PARTICIPATE IN THE ONLINE
BROADCAST OF THIS MEETING WILL BE POSTED ON OUR WEBSITE ON THE
DAY OF THE MEETING HERE:**

https://www.ethics.state.tx.us/meetings/meetings_2025-2029.php#2029

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys; Section 551.074, Government Code, Personnel Matters; Sections 571.039, .40, Government Code, confidential sworn complaint matters, Closed Meeting.**

A. Discussion of pending litigation to seek legal advice relating to the following:

- i. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250th Judicial District Court, Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; Cause No. 03-21-00033, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas. Cause No. D-1-GN-21-003269: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the 459th Judicial District Court, Travis County, Texas; and related case, Cause No. 03-22-00133-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
- ii. Case No. 4:23-cv-00808-P, *Institute for Free Speech, a nonprofit corporation and public interest law firm, vs. J.R. Johnson in his official and individual capacities as Executive Director of the Texas Ethics Commission; Mary Kennedy, Chris Flood, and Richard Schmidt in their official capacities as commissioners of the Texas Ethics Commission; and Randall Erben, Chad Craycraft, Patrick Mizell, Joseph Slovacek, and*

For more information, contact James Tinley, Executive Director, at (512) 463-5800.

Steven Wolens, in their individual and official capacities as commissioners of the Texas Ethics Commission, in the U.S. District Court for the Northern District of Texas, Fort Worth Division.

- iii. Cause No. PD-0310-23, *Ex Parte John Morgan Stafford*, in the Texas Court of Criminal Appeals.
 - iv. Cause No. 2023-DCL-01478, *Valleywide Pharmacy and DMI, Inc., vs. Texas Ethics Commission, by and through its Executive Director, J.R. Johnson, in his official capacity*, in the 445th Judicial District Court, Cameron County, Texas.
 - v. Civil Action 1:24-CV-500, *LIA Network v. J.R. Johnson, in his official capacity as Executive Director of the Texas Ethics Commission, et al.*, in the United States District Court for the Western District of Texas, Austin Division.
 - vi. Cause No. 2024-DCL-03953, *Ruben Cortez, Jr. v. Texas Ethics Commission*, in the 404th Judicial District Court, Cameron County, Texas.
 - vii. Cause Nos. PD-0522-21, PD-0523-21, PD-0524-21, & PD-0525-21, *Ex Parte Robbie Gail Charette*, in the Court of Criminal Appeals of Texas.
 - viii. Cause No. 25-0679, *Christopher D. Paddie, Sr. v. Texas Ethics Commission, et al.*, in the 71st Judicial District Court, Harrison County, Texas.
- B. Discussion of contemplated litigation and to seek legal advice regarding the collection of imposed penalties.
- C. Discussion and possible action related to personnel matters, including the potential hiring of a general counsel.
- D. Confidential sworn complaint matters under Section 571.139 of the Government Code.
- E. Deliberations of pending motions in the formal hearing of Sworn Complaint SC-3230109, In the matter of Chris Paddie.
- F. Reconvene in open session.

3. Recess or continue to “Agenda 2” noticed for the same time and place as this agenda.

CERTIFICATION: I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Certifying Official & Agency Liaison: James Tinley, Executive Director.

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1. Call to order; roll call.
2. Discussion and possible action related to the hiring of TEC's general counsel.
3. Discussion regarding dates for the next quarterly Commission meeting.
4. Approve minutes for the following meetings:
 - o Executive Session – June 12, 2025; and
 - o Public Agenda – June 12, 2025.

RULEMAKING

Rule Adoption

5. Discussion and possible action on the adoption or proposal and re-publication in the Texas Register regarding amendments to 1 Tex. Admin. Code § 18.31, regarding adjustments to reporting thresholds.

Rule Publication

6. Discussion and possible action on the proposal and publication in the Texas Register regarding re-adoption of Chapter 34 of the TEC rules, related to regulation of lobbyists.

For more information, contact James Tinley, Executive Director, at (512) 463-5800.

7. Discussion and possible action on the proposal and publication in the Texas Register regarding re-adoption of Chapter 22 of the TEC rules, related to restrictions on contributions and expenditures.
8. Discussion and possible action on the proposal and publication in the Texas Register regarding re-adoption of Chapter 24 of the TEC rules, related to restrictions on contributions and expenditures applicable to corporations and labor organizations.
9. Discussion and possible action regarding the TEC's comprehensive review its rules, including closing rule reviews for the following chapters: Chapter 6 (Organization and Administration), chapter 8 (Advisory Opinions), Chapter 10 (Ethics Training Programs), Chapter 12 (Sworn Complaints), Chapter 13 (Referrals to Prosecutors), Chapter 18 (General Rules Concerning Reports), Chapter 28 (Reports by a Candidate for Speaker of the House of Representatives) and Chapter 40 (Financial Disclosure for Public Officers).

ADVISORY OPINIONS

10. Advisory Opinion Request No. AOR-727: May an incorporated out-of-state political committee that accepts corporate contributions contribute to Texas state and local candidates, including to a specific-purpose committee, provided it does so from a separate account that only accepts contributions from individuals and that would otherwise come from permissible sources under Texas law?

Second, assuming the contributions described under the facts above are permissible, does it matter if the out-of-out state political committee is controlled by a non-candidate officeholder?

Third, if control by a candidate leads to the conclusion that the out-of-state committee is prohibited from making the contributions described above, would it be permissible for the out-of-state committee to: (i) contribute to a Direct Campaign Expenditure Only Committee or (ii) make direct expenditures itself?

This opinion construes Sections 252.001(15), 252.003(a), 253.032, 253.097, 254.1581, of the Election Code.

11. Advisory Opinion Request No. AOR-731: Whether members of the State Employee Charitable Campaign are appointed officers required to file a Personal Financial Statement.

This opinion construes Chapter 572 of the Government Code.

12. Advisory Opinion Request No. AOR-732: Whether a member of the legislature may use campaign funds to reimburse lodging and meal expenses incurred in connection with officeholder duties during the interim if the member also receives a state per diem for that day of legislative work.

This opinion construes Chapter 254 of the Election Code.

13. Advisory Opinion Request No. AOR-733: Whether certain Public Service Announcements produced by a non-profit and featuring Texas state elected officials would trigger any campaign finance reporting requirements or require a political advertising disclosure statement.

This opinion construes Chapter 254 of the Election Code.

14. Advisory Opinion Request No. AOR-734: Whether a current State Board of Education (SBOE) member can provide continuing professional development to educators in return for compensation during their SBOE service.

This opinion construes Chapter 572 of the Government Code and Chapter 36 of the Penal Code.

15. Advisory Opinion Request No. AOR-735: Whether the TEC has authority to assess a civil penalty for a late personal financial statement filed by a director of the Harris County-Houston Sports Authority?

This opinion construes Chapter 572 of the Government Code and Sections 335.1085 and 335.110 of the Local Government Code.

ADMINISTRATIVE WAIVER OF FINES, TREASURER TERMINATIONS AND REPORTS MORE THAN 30 DAYS LATE

16. Discussion and possible action on appeals of determinations made under 1 Tex. Admin. Code §§ 18.11, 18.25 and 18.26 relating to administrative waiver or reduction of a civil penalty to an untimely filed report, for the following filers:

Staff Recommendation: Waiver

- A. Cook, Molly C. (00086313)
- B. Crownover, Buffy (00087462)
- C. Doyle, Michael P., Campaign Treasurer, Harris County Republican Party (CEC) (15507)
- D. Garza-Steele, Vivian, Campaign Treasurer, Zachry Corporation Political Action Committee (00017353)
- E. Graves, Brooke, Campaign Treasurer, High Plains Republican Women PAC (00054835)
- F. Herrera, Diane, Campaign Treasurer, Leander Area Republican Women (00085167)
- G. Kosich, Nicole Amy (00088275)
- H. Moré, Janette, Campaign Treasurer, Travis County Republican Party (CEC)(00039023)
- I. Otts, Barry (00087994)
- J. Raymond, Carlos Antonio (00080137)
- K. Snelgrooes, Kimberly, Campaign Treasurer, Panhandle First (00087989)
- L. Snowden, Tara D. (00060389)

For more information, contact James Tinley, Executive Director, at (512) 463-5800.

M. Zachary, Linda (00058757)

Staff Recommendation: Reduction

N. Bendele, Fohn (00087669)

O. Bess, Danielle (00086211)

P. Blair, Emily, Campaign Treasurer, Austin Apartment Association PAC (00016265)

Q. Esquenazi, James, Campaign Treasurer, Killeen Firefighters for Responsible Government (00081138)

R. Hopkins, Perla Muñoz (00086384)

S. Ramirez, Gocha Allen (00083328)

T. Rublein, Aaron, Campaign Treasurer, Houston LGBTQ+ Political Caucus PAC (00016168)

U. Trimble, James, Campaign Treasurer, Haltom City Firefighters Committee for Responsible Government (00065031)

Staff Recommendation: No Further Reduction or Waiver

V. Armstrong, Lisa, Campaign Treasurer, We Love Odessa (00088878)

17. Discussion and possible action regarding the termination of a campaign treasurer appointment for the following inactive political committees:

Individuals

1. Arrieta, Alejandro (00086356)
2. Byrn, Charles D., Jr. (00088141)
3. Cantu, Robert (00088172)
4. Carmona, Omar (00087731)
5. Crenshaw, Sandra (00069780)
6. Freeman, Dawn E. (00088010)
7. Guillory James O., II (00085736)
8. LeBlanc, Jeinay (00088325)
9. Mazzola, Brian N. (00088206)
10. McDaniel, Joe S. (00088221)
11. Price, Albert J., Jr. (00087663)
12. Ramirez, Larissa (00088089)
13. Sloan, Terry L. (00087999)
14. Walton, Victoria (00082438)

Political Committees

15. Citizens for the Students of Boling ISD, Kem Ford, Treasurer (00088760)
16. Friends for Katy Schools, Jason T. Walker, Treasurer (00087882)

For more information, contact James Tinley, Executive Director, at (512) 463-5800.

17. Grand Prairie Strong, Peter Salas, Treasurer (00088637)
18. Keep Collin Red, Christine Vorderbruggen, Treasurer (00086580)
19. Red River Patriots PAC, Ryan Benjamin Davis, Treasurer (00088304)
20. Save Texas Now, Lance Cargill, Treasurer (00085775)
21. Vote YES for New Diana Kids PAC, Joshua Sims, Treasurer (00088658)
22. Wylie Bulldogs United for Growth Bond 2023, Jud Beall, Treasurer (00088048)

OTHER MATTERS

18. Briefing, discussion and possible action, including the formation of a subcommittee of legislation regarding new legislation from the 89th Regular and Special Legislative Sessions, including the implementation SB 293, SB 869, SB 2514, HB 119, HB 551, and actions taken or in-progress to implement recommendations made in the Sunset Advisory Commission report on the TEC.
19. Discussion and possible action related to extending or otherwise amending existing contracts (Nos. OCC 2023-356-0089 and OCC 2024-356-0503) with Butler Snow, LLP, or entering into new contracts with Bulter Snow, LLP for legal services in connection with the same scope of legal services described in the existing contracts (Nos. OCC 2023-356-0089 and OCC 2024-356-0503).
20. Adjourn.

CERTIFICATION: I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Certifying Official & Agency Liaison: James Tinley, Executive Director.

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§18.31. Adjustments to Reporting Thresholds.

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
253.031(b)	PAC: Amount of contributions or expenditures permitted before TA is required	\$500	<u>\$1,110</u> [\$1,080]
253.031(d)(2)	CEC: Amount of contributions or expenditures permitted before TA is required	\$25,000	<u>\$41,460</u> [\$40,330]
253.032(a)	Contribution by Out-of-state PAC: Threshold above which certain paperwork is required	\$500	<u>\$1,140</u> [\$1,110]
253.032(a)(1)	Contribution to Out-of-state PAC: Threshold above which certain contribution information is required	\$100	<u>\$230</u> [\$220]
253.032(e)	Contribution by Out-of-state PAC: Threshold at or below which certain information is required	\$500	<u>\$1,140</u> [\$1,110]
254.031(a)(1)	Contributions: Threshold over which more information is required	\$50	\$110
254.031(a)(2)	Loans: Threshold over which more information is required	\$50	\$110
254.031(a)(3)	Expenditures: Threshold over which more information is required	\$100	<u>\$230</u> [\$220]
254.031(a)(5)	Contributions: Threshold at or below which more information is not required	\$50	\$110
254.031(a)(5)	Expenditures: Threshold at or below which more information is not required	\$100	<u>\$230</u> [\$220]
254.031(a)(9)	Interest, credits, refunds: Threshold over which more information is required	\$100	\$140
254.031(a)(10)	Sale of political assets: Threshold over which proceeds must be reported	\$100	\$140
254.031(a)(11)	Investment Gain: Threshold over which more information is required	\$100	\$140
254.031(a)(12)	Contribution Gain: Threshold over which more information is required	\$100	\$140
254.0311(b)(1)	Caucus, contributions from non-caucus members: Threshold over which more information is required	\$50	\$110
254.0311(b)(2)	Caucus, loans: Threshold over which more information is required	\$50	\$110

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.0311(b)(3)	Caucus, expenditures: Threshold over which more information is required	\$50	\$110
254.0311(b)(4)	Caucus, contributions and expenditures: Threshold at or below which more information is not required	\$50	\$110
254.0312	Contributions, Best Efforts: Threshold under which filer is not required to request contributor information to be in compliance	\$500	<u>\$870</u> [\$850]
254.036	Electronic Filing Exemption: Threshold at or below which a filer may qualify	\$20,000	<u>\$34,890</u> [\$33,190]
254.038(a)	Daily Reports by certain candidates and PACs: Contribution threshold triggering report	\$1,000	<u>\$2,290</u> [\$2,220]
254.039	Daily Reports by GPACs: Contribution threshold triggering report	\$5,000	<u>\$7,820</u> [\$7,600]
254.039	Daily reports by GPACs: DCE expenditure thresholds (single candidate/group of candidates)	\$1,000/\$15,000	<u>\$2,290/\$34,330</u> [\$2,220/\$33,370]
254.0611(a)(2)	Judicial candidates, contributions: Threshold over which more information is required	\$50	\$110
254.0611(a)(3)	Judicial candidates, asset purchase: Threshold over which more information is required	\$500	<u>\$1,140</u> [\$1,110]
254.0612	Statewide executive and legislative candidates, contributions: Threshold over which more information is required	\$500	<u>\$1,140</u> [\$1,110]
254.095	Local officeholders, contributions: Threshold under which reporting is not required	\$500	<u>\$1,140</u> [\$1,110]
254.151(6)	GPAC, contributions: Threshold over which more information is required	\$50	\$110
254.1541(a)	GPAC, higher itemization threshold: Threshold under which it applies	\$20,000	<u>\$33,170</u> [\$32,240]
254.1541(b)	GPACs that meet higher itemization threshold: Threshold over which more contributor information is required	\$100	<u>\$230</u> [\$220]
254.156(1)	MPAC: Threshold over which contribution, lender and expenditure information is required	\$10	\$20

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.156(2)	MPACs that meet higher itemization threshold: Threshold over which more contributor information is required	\$20	<u>\$50</u> [\$40]
254.181, 254.182, 254.183	Candidate or SPACs, modified reporting: Contribution or expenditure threshold at or below which filers may avoid pre-election reports	\$500	<u>\$1,140</u> [\$1,110]
254.261	DCE filers: Threshold over which a report must be filed	\$100	<u>\$170</u> [\$160]

1

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.003(1)	Lobbyist, expenditures: Threshold over which registration is required	\$500, by 1 Tex. Admin. Code §34.41	<u>\$990</u> [\$970]
305.003(2)	Lobbyist, compensation: Threshold over which registration is required	\$1,000, by 1 Tex. Admin. Code §34.43	<u>\$1,990</u> [\$1,930]
305.004(7)	Lobbying for political party: Threshold at or below which registration is not required	\$5,000	<u>\$11,440</u> [\$11,120]
305.005(g)(2)	Lobbyist: Compensation threshold	\$10,000	<u>Less than \$22,890</u> [Less than \$22,240]
305.005(g)(3)	Lobbyist: Compensation threshold	\$25,000	<u>\$22,890 to less than \$57,220</u> [\$22,240 to less than \$55,610]
305.005(g)(4)	Lobbyist: Compensation threshold	\$50,000	<u>\$57,220 to less than \$114,430</u> [\$55,610 to less than \$111,220]
305.005(g)(5)	Lobbyist: Compensation threshold	\$100,000	<u>\$114,430 to less than \$228,870</u> [\$111,220 to less than \$222,440]
305.005(g)(6)	Lobbyist: Compensation threshold	\$150,000	<u>\$228,870 to less than \$343,300</u> [\$222,440 to less than \$333,660]
305.005(g)(7)	Lobbyist: Compensation threshold	\$200,000	<u>\$343,300 to less than \$457,730</u> [\$333,660 to less than \$444,880]

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.005(g)(8)	Lobbyist: Compensation threshold	\$250,000	\$457,738 to less than \$572,160 [\$444,880 to less than \$556,100]
305.005(g)(9)	Lobbyist: Compensation threshold	\$300,000	\$572,160 to less than \$686,600 [\$556,100 to less than \$667,320]
305.005(g)(10)	Lobbyist: Compensation threshold	\$350,000	\$686,600 to less than \$801,030 [\$667,320 to less than \$778,540]
305.005(g)(11)	Lobbyist: Compensation threshold	\$400,000	\$801,030 to less than \$915,460 [\$778,540 to less than \$889,760]
305.005(g)(12)	Lobbyist: Compensation threshold	\$450,000	\$915,460 to less than \$1,029,890 [\$889,760 to less than \$1,000,980]
305.005(g)(13)	Lobbyist: Compensation threshold	\$500,000	\$1,029,890 to less than \$1,144,330 [\$1,000,980 to less than \$1,112,200]
305.005(g-1)	Lobbyist: Compensation threshold	\$500,000	\$1,144,330 or more [\$1,112,200 or more]
305.0061(c)	Lobbyist, legislative/executive branch member: Threshold over which gifts, awards and mementos must be disclosed	\$50	\$110
305.0061(e-1)	Lobbyist, food and beverage: threshold at or below which it is considered a gift and reported as such	\$50	\$110
305.0063	Lobbyist, annual filer: expenditure threshold at or below which filer may file annually	\$1,000	\$2,290 [\$2,220]

1

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.022(a)(1)	PFS threshold	less than \$5,000	less than \$11,440 [\$11,120]
572.022(a)(2)	PFS threshold	\$5,000 to less than \$10,000	\$11,440 [\$11,120] to less than \$22,890 [\$22,240]
572.022(a)(3)	PFS threshold	\$10,000 to less than \$25,000	\$22,890 [\$22,240] to less than \$57,220 [\$55,610]
572.022(a)(4)	PFS threshold	\$25,000 or more	\$57,220 [\$55,610] or more

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.005, 572.023(b)(1)	PFS, retainer: Threshold over which filer with a substantial interest in a business entity must report more information	\$25,000	<u>\$57,220</u> [\$55,610]
572.023(b)(4)	PFS, interest, dividends, royalties and rents: Threshold over which information must be reported	\$500	<u>\$1,140</u> [\$1,110]
572.023(b)(5)	PFS, loans: Threshold over which information must be reported	\$1,000	<u>\$2,290</u> [\$2,220]
572.023(b)(7)	PFS, gifts: Threshold over which information must be reported	\$250	<u>\$570</u> [\$560]
572.023(b)(8)	PFS, income from trust: Threshold over which information must be reported	\$500	<u>\$1,140</u> [\$1,110]
572.023(b)(15)	PFS, government contracts: Threshold of aggregate over which more information must be reported	Exceeds \$10,000	Exceeds <u>\$12,560</u> [\$12,210]
572.023(b)(15)(A)	PFS, government contracts: Itemization threshold	\$2,500 or more	<u>\$3,140</u> [\$3,050] or more
572.023(b)(16)(D)(i)	PFS, bond counsel fees paid to legislator: Threshold	less than \$5,000	less than <u>\$6,280</u> [\$6,100]
572.023(b)(16)(D)(ii)	PFS, bond counsel fees paid to legislator: Threshold	at least \$5,000 but less than \$10,000	at least <u>\$6,280</u> [\$6,100] but less than <u>\$12,560</u> [\$12,210]
572.023(b)(16)(D)(iii)	PFS, bond counsel fees paid to legislator: Threshold	at least \$10,000 but less than \$25,000	at least <u>\$12,560</u> [\$12,210] but less than <u>\$31,410</u> [\$30,520]
572.023(b)(16)(D)(iv)	PFS, bond counsel fees paid to legislator: Threshold	\$25,000 or more	<u>\$31,410</u> [\$30,520] or more
572.023(b)(16)(E)(i)	PFS, bond counsel fees paid to individual's firm: Threshold	less than \$5,000	less than <u>\$6,280</u> [\$6,100]
572.023(b)(16)(E)(ii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least \$5,000 but less than \$10,000	at least <u>\$6,280</u> [\$6,100] but less than <u>\$12,560</u> [\$12,210]
572.023(b)(16)(E)(iii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least \$10,000 but less than \$25,000	at least <u>\$12,560</u> [\$12,210] but less than <u>\$31,410</u> [\$30,520]
572.023(b)(16)(E)(iv)	PFS, bond counsel fees paid to individual's firm: Threshold	\$25,000 or more	<u>\$31,410</u> [\$30,520] or more

1 Figure 4: No change.

2 Figure 5: No change.

3 (b) The changes made by this rule apply only to conduct occurring on or after the effective date
4 of this rule.

5 (c) The effective date of this rule is January 1, 2026[~~2025~~].

6 (d) In this section:

7 (1) “CEC” means county executive committee;

8 (2) “DCE” means direct campaign expenditure-only filer;

9 (3) “GPAC” means general-purpose political committee;

10 (4) “MPAC” means monthly-filing general-purpose political committee;

11 (5) “PAC” means political committee;

12 (6) “PFS” means personal financial statement;

13 (7) “SPAC” means specific-purpose political committee; and

14 (8) “TA” means treasurer appointment.

1 **CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES**

2 **§22.1. Certain Campaign Treasurer Appointments Required before Political**
3 **Activity Begins.**

4 (a) ~~[An individual]~~ A candidate must file a campaign treasurer appointment with the
5 proper authority upon becoming a candidate. ~~[before accepting a campaign contribution~~
6 ~~or making or authorizing a campaign expenditure.]~~

7 ~~[(1) An officeholder may accept an officeholder contribution and make or~~
8 ~~authorize an officeholder expenditure without a campaign treasurer appointment~~
9 ~~on file.]~~

10 ~~[(2) An officeholder who does not have a campaign treasurer appointment on file~~
11 ~~may not accept a campaign contribution or make or authorize a campaign~~
12 ~~expenditure.]~~

13 ~~[(b) A political committee may not accept political contributions exceeding the amount~~
14 ~~specified for making political contributions or making or authorizing political~~
15 ~~expenditures in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31~~
16 ~~without filing a campaign treasurer appointment with the appropriate filing authority.]~~

17 ~~[(c) Unless the committee's campaign treasurer appointment was filed not later than the~~
18 ~~30th day before the appropriate election day, a political committee may not knowingly~~
19 ~~make or authorize campaign contributions or campaign expenditures exceeding the~~
20 ~~amount specified in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC~~
21 ~~§18.31 to support or oppose a candidate in a primary or general election for the~~
22 ~~following:]~~

23 ~~[(1) a statewide office;]~~

24 ~~[(2) a seat in the state legislature;]~~

25 ~~[(3) a seat on the State Board of Education;]~~

26 ~~[(4) a multi-county district office; or]~~

27 ~~[(5) a judicial district office filled by voters of only one county.]~~

28 ~~[(d) This section does not apply to the county executive committee of a political party~~
29 ~~except as provided in Chapter 20, Subchapter I of this title (relating to Rules Applicable~~
30 ~~to a Political Party's County Executive Committee).]~~

31 **[§22.3. Disclosure of True Source of Contribution or Expenditure.**

32 ~~A person may not knowingly make or authorize a political contribution or political~~
33 ~~expenditure in the name of or on behalf of another unless the person discloses the name~~
34 ~~and address of the person who is the true source of the contribution.]~~

1 ~~§22.6. Reporting Direct Campaign Expenditures.~~

2 ~~(a) Section 254.261 of the Election Code applies to a person who, not acting in concert~~
3 ~~with another person, makes one or more direct campaign expenditures that exceed the~~
4 ~~amount specified in Tex. Elec. Code §254.261(a), as amended by Figure 1 in 1 TAC~~
5 ~~§18.31 in an election from the person's own property.]~~

6 ~~§22.7. Contribution from Out-of-State Committee.~~

7 ~~[(a) For each reporting period during which a candidate, officeholder, or political~~
8 ~~committee accepts a contribution or contributions from an out-of-state political~~
9 ~~committee totaling more than the amount specified in Tex. Elec. Code §253.032(a), as~~
10 ~~amended by Figure 1 in 1 TAC §18.31, the candidate, officeholder, or political~~
11 ~~committee must comply with subsections (b) and (c) of this section.]~~

12 ~~[(b) The candidate, officeholder, or political committee covered by subsection (a) of this~~
13 ~~section must first obtain from the out-of-state committee one of the following documents~~
14 ~~before accepting the contribution that causes the total received from the out-of-state~~
15 ~~committee to exceed the amount specified in Tex. Elec. Code §253.032(a), as amended~~
16 ~~by Figure 1 in 1 TAC §18.31 during the reporting period:]~~

17 ~~[(1) a written statement, certified by an officer of the out-of-state political~~
18 ~~committee, listing the full name and address of each person who contributed more~~
19 ~~than the amount specified in Tex. Elec. Code §253.032(a)(1), as amended by~~
20 ~~Figure 1 in 1 TAC §18.31 to the out-of-state political committee during the 12~~
21 ~~months immediately preceding the date of the contribution; or]~~

22 ~~[(2) a copy of the out-of-state political committee's statement of organization~~
23 ~~filed as required by law with the Federal Election Commission and certified by an~~
24 ~~officer of the out-of-state committee.]~~

25 ~~[(c) The document obtained pursuant to subsection (b) of this section shall be included as~~
26 ~~part of the report that covers the reporting period in which the candidate, officeholder, or~~
27 ~~political committee accepted the contribution that caused the total accepted from the out-~~
28 ~~of-state committee to exceed the amount specified in Tex. Elec. Code §253.032(e), as~~
29 ~~amended by Figure 1 in 1 TAC §18.31.]~~

30 ~~[(d)]~~ (a) A candidate, officeholder, or political committee that:

31 (1) receives contributions covered by [subsection (a) of this section] §253.032(a)
32 of the Election Code from the same out-of-state committee in successive reporting
33 periods; and

34 (2) complies with [subsection (b)(2) of this section] §253.032(a)(2) of the
35 Election Code before accepting the first contribution [triggering subsection (a) of

36 this section,] triggering §253.032(a), may comply with subsection (c) of this
37 section §253.032(e) in successive reporting periods by submitting a copy of the
38 certified document obtained before accepting the first contribution triggering

1 ~~[subsection (a) of this section,]~~ §253.032(a), rather than by obtaining and
2 submitting an original certified document for each reporting period, provided the
3 document has not been amended since the last submission.

4 ~~[(e)]~~ (b) A candidate, officeholder, or political committee that accepts a contribution or
5 contributions totaling the amount specified in Tex. Elec. Code §253.032(e), as amended
6 by Figure 1 in 1 TAC §18.31 or less from an out-of-state political committee shall
7 include as part of the report covering the reporting period in which the contribution or
8 contributions are accepted either:

9 (1) a copy of the out-of-state committee's statement of organization filed as
10 required by law with the Federal Election Commission and certified by an officer
11 of the out-of-state committee; or

12 (2) the following information:

13 (A) the full name of the committee, and, if the name is an acronym, the
14 words the acronym represents;

15 (B) the address of the committee;

16 (C) the telephone number of the committee;

17 (D) the name of the person appointing the campaign treasurer; and

18 (E) the following information for the individual appointed campaign
19 treasurer and assistant campaign treasurer:

20 (i) the individual's full name;

21 (ii) the individual's residence or business street address; and

22 (iii) the individual's telephone number.

23 ~~[(f) This section does not apply to a contribution from an out-of-state political committee~~
24 ~~if the committee filed a campaign treasurer appointment with the commission before~~
25 ~~making the contribution.]~~

26 **~~§22.9. Cash Contributions Exceeding \$100 Prohibited.~~**

27 ~~[(a) A candidate, officeholder, or specific purpose committee may not knowingly accept~~
28 ~~political contributions in cash that in the aggregate exceed \$100 from a contributor in a~~
29 ~~reporting period.~~

30 ~~(b) Checks are not considered cash for purposes of this section.]~~

1 **~~§22.11. Prohibition on Contributions during Regular Session.~~**

2 ~~(a) During the period that begins on the 30th day before the date a regular legislative~~
3 ~~session convenes and continuing through the 20th day after the date of final adjournment,~~
4 ~~a person may not knowingly make a political contribution to:~~

5 ~~(1) a statewide officeholder or officer elect;~~

6 ~~(2) a member of the legislature or member elect; or~~

7 ~~(3) a specific purpose committee for supporting, opposing, or assisting a~~
8 ~~statewide officeholder or officer elect or member or member elect of the~~
9 ~~legislature.~~

10 ~~(b) An individual or committee described in subsection (a) of this section may not~~
11 ~~knowingly accept a political contribution, and shall refuse a political contribution that is~~
12 ~~received, during the period prescribed by subsection (a) of this section.~~

13 ~~(c) A political contribution that is received and refused pursuant to this section shall be~~
14 ~~returned to the contributor not later than the 30th day after the date of receipt.~~

15 ~~(d) A contribution made by United States mail or by common or contract carrier is not~~
16 ~~considered received during the period prescribed by subsection (a) of this section if it was~~
17 ~~deposited into an official repository of the United States Postal Service or delivered to a~~
18 ~~common or contract carrier with postage prepaid and properly addressed before the~~
19 ~~beginning of the period. The date of the postmark or common or contract carrier~~
20 ~~documents is considered to be the date the contribution was placed in the mail or~~
21 ~~delivered to the common or contract carrier unless proven otherwise.~~

22 ~~(e) This section does not apply to a political contribution that was made and accepted~~
23 ~~with the intent that it be used:~~

24 ~~(1) in an election held or ordered during the period prescribed by subsection (a) of~~
25 ~~this section in which the person accepting the contribution is a candidate if the~~
26 ~~contribution was made after the person appointed a campaign treasurer with the~~
27 ~~appropriate authority and before the person was sworn in for that office;~~

28 ~~(2) to defray expenses incurred in connection with an election contest; or~~

29 ~~(3) by a person who holds a statewide office or a member of the legislature, if the~~
30 ~~person or member was defeated at the general election held immediately before~~
31 ~~the session is convened, or by a specific purpose political committee that supports~~
32 ~~or assists only that person or member.~~

33 **§22.13. Contributions in the Capitol Prohibited.**

34 In section §253.039 of the Election Code, the term “Capitol” includes the Capitol
35 Building and the Capitol Extension, and any office that is being used as the official

capitol office for a member of the legislature, the governor, the lieutenant governor, or the secretary of state.

§22.17. Prohibition on Personal Use of Political Contributions.

~~[(a) A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. This subsection applies only to political contributions accepted on or after September 1, 1983.~~

~~(b) A specific purpose committee that accepts a political contribution may not convert the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder. This prohibition applies only to political contributions accepted on or after September 1, 1987.~~

~~(c) The prohibitions set out in subsections (a) and (b) of this section apply to the use of an asset purchased with political contributions and to the use of any interest or other income earned on political contributions.~~

~~(d) (a) “Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. In addition to the exceptions listed in §253.035(d) of the Election Code, it does not include:~~

~~(1) payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not normally reside in Travis County, but excluding payments prohibited pursuant to §22.15 of this title (relating to Prohibition on Payments Made to Purchase Real Property);~~

~~(2) payments of federal income taxes due on interest and other income earned on political contributions;~~

~~(3) use of contributions for defending a criminal action or prosecuting or defending a civil action brought by or against the individual in his or her status as a candidate or officeholder;~~

~~(4) use of contributions for participating in an election contest or participating in a civil action to determine an individual’s eligibility to be a candidate for, or elected or appointed to, a public office in this state;~~

~~(5) an expenditure for a purpose listed in §20.289 of this title (relating to Disposition of Unexpended Contributions);~~

~~(6) payment of travel expenses of a candidate’s spouse or any other person if the spouse or other person is campaigning for candidate; or~~

1 ~~(7) payment of travel expenses of an officeholder's spouse or any other person if~~
2 ~~the other person's travel is in connection with the performance of duties or~~
3 ~~activities as a public officeholder.}]~~

4 ~~[(e)]~~ (An asset purchased with political contributions is not converted to personal use if
5 the political contributions are fully reimbursed during the reporting period in which the
6 use occurred in an amount that reasonably reflects the value of the use.

7 **§22.19. General Restrictions on Reimbursement of Personal Funds.**

8 (a) If a candidate makes political expenditures from the candidate's personal funds, he or
9 she may reimburse those personal funds from political contributions only if the
10 expenditure is reported and the candidate states his or her intent to reimburse personal
11 funds consistent with title 15 and this title.

12 (b) If an officeholder who does not have a campaign treasurer appointment on file makes
13 political expenditures from the officeholder's personal funds, he or she may reimburse
14 those personal funds from political contributions only if the expenditure is reported and
15 the officeholder states his or her intent to reimburse personal funds consistent with title
16 15 and this title.

17 (c) A candidate or officeholder may reimburse personal funds from political contributions
18 for the use of personal assets for political purposes provided that the reimbursement is
19 reported as a political expenditure.

20 (d) A candidate or officeholder who makes political expenditures from his or her personal
21 funds may reimburse those personal funds from political contributions only if:

22 (1) the expenditures were fully reported as political expenditures on the report
23 covering the period during which the expenditures were made; and

24 (2) the report disclosing the expenditures indicates that the expenditures were
25 made from the candidate's or officeholder's personal funds and are subject to
26 reimbursement.

27 (e) A candidate's or officeholder's failure to comply with subsection (d) of this section
28 may not be cured by filing a corrected report after the report deadline has passed.

29 (f) A candidate or officeholder who has complied with subsection (d) of this section and
30 whose personal funds have been reimbursed from political contributions must report the
31 amount of the reimbursement as a political expenditure in the report covering the period
32 during which the reimbursement was made.

33 ~~[(g) Section 22.21 of this title (relating to Additional Restrictions on Reimbursement of~~
34 ~~Personal Funds and Payments on Certain Loans) sets limits on the amount of political~~
35 ~~expenditures from personal funds that a statewide officeholder may reimburse from~~
36 ~~political contributions.}]~~

~~§22.21. Additional Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans.~~

~~(a) A candidate or officeholder who makes political expenditures from personal funds may not reimburse his or her personal funds from political contributions in amounts that in the aggregate exceed the following amounts for each election in which the person's name appears on the ballot:~~

~~(1) for a statewide office other than governor, \$250,000; or~~

~~(2) for governor, \$500,000.~~

~~(b) A candidate or officeholder who accepts one or more political contributions in the form of loans, including an extension of credit or a guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree by affinity or consanguinity, as defined by the Government Code, Chapter 573, Subchapter B (concerning Relationships by Consanguinity or by Affinity), may not use political contributions to repay the loans in amounts that in the aggregate exceed the amount prescribed by subsection (a) of this section. Interest on loans from the personal funds of any person related to the candidate or officeholder within the second degree by affinity or consanguinity is included in the amount prescribed by subsection (a) of this section.~~

~~(c) The total amount of both reimbursements and repayments made by a candidate or officeholder under this section may not exceed the amount prescribed by subsection (a) of this section.~~

~~(d) An individual who is both a candidate and an officeholder covered by subsection (a) of this section may reimburse his or her personal funds or repay loans from political contributions only in one capacity.]~~

§22.23. Restrictions on Certain Payments.

~~[(a) A candidate or officeholder, or a specific purpose committee for supporting, opposing, or assisting the candidate or officeholder, may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to:~~

~~(1) a business in which the candidate or officeholder has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business; or~~

~~(2) the candidate or officeholder or the spouse or dependent child of the candidate or officeholder.]~~

~~[(b)](a) A payment made from a political contribution to a business described by §253.038 of the Election Code [subsection (a) of this section] that is not prohibited by~~

1 that subsection may not exceed the amount necessary to reimburse the business for actual
2 expenditures made by the business.

3 ~~[(e)]~~(b) A discount given by a corporation to conform with subsection ~~[(b)]~~ (a) of this
4 section does not constitute a political contribution from the corporation.

5 **~~§22.27. Time Limit on Retaining Unexpended Contributions.~~**

6 ~~A former candidate may retain unexpended political contributions after he or she ceases~~
7 ~~to be a candidate or officeholder only in accordance with §20.237 of this title (relating to~~
8 ~~Final Disposition of Unexpended Contributions) or §20.289 of this title (relating to~~
9 ~~Disposition of Unexpended Contributions), as applicable.]~~

10 **§22.29. Activity after Death or Incapacity of Candidate or Officeholder.**

11 ~~[(a)]~~ The legal representative of a candidate or officeholder who has died or become
12 incapacitated may accept political contributions and make or authorize expenditures only
13 for the following purposes:

14 (1) payment of debts or expenses in connection with a campaign or in connection
15 with officeholder duties and activities;

16 (2) payments to the political party with which the person was affiliated when the
17 person's name last appeared on a ballot;

18 (3) political contributions to a candidate or political committee;

19 (4) donations to the Comptroller of Public Accounts for deposit in the state
20 treasury;

21 (5) refunds of contributions to one or more persons from whom political
22 contributions were received, not to exceed the total amount contributed by each
23 person within the last two years;

24 (6) donations to a charity recognized by the Internal Revenue Service as tax-
25 exempt;

26 (7) donations to a public or private post-secondary educational institution or an
27 institution of higher education as defined by the Education Code, §61.003(8)
28 (concerning Definitions), solely for the purpose of assisting or creating a
29 scholarship program; or

30 (8) payment of federal income taxes due on interest and other income earned on
31 political contributions.

32 ~~[(b) See §20.67 of this title (relating to Reporting after the Death or Incapacity of a Filer)~~
33 ~~in regard to reporting requirements after the death or incapacity of a candidate or~~
34 ~~officeholder.]~~

1 **§22.31. Restrictions on Foreign Nationals.**

2 Federal law prohibits contributions from foreign nationals who have not been granted
3 permanent residence in the United States. See United States Code, Title 2, §441(e).

4 **§22.35. Corporate Contributions to Certain Political Committees.**

(a) A political committee that accepts a monetary political contribution from a corporation or labor organization shall maintain the contribution in a separate account for political contributions from corporations and labor organizations.

8 (b) A political committee that accepts a political contribution from a corporation or labor
9 organization shall not use the contribution to make a political contribution to:

10 (1) a candidate for elective office;

11 (2) an officeholder; or

(3) a political committee other than a hybrid committee, a direct campaign expenditure-only committee, or a political committee that supports or opposes measures exclusively.

16 **§22.37. Virtual Currency Contributions.**

17 (a) Virtual currency contributions are considered “in-kind” contributions.

(b) A candidate, officeholder, or political committee must report a gain from the sale of virtual currency contributions on the appropriate schedule if the gain exceeds the reporting threshold set by §[section-]254.031(9) of the Election Code and amended by §[section-]18.31 of this title (relating to Adjustments to Reporting Thresholds).

(c) The value of a virtual currency contribution shall be reported as the fair market value of the virtual currency upon receipt.

1 **CHAPTER 24. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES**
2 **APPLICABLE TO CORPORATIONS AND LABOR ORGANIZATIONS**

3 **§24.1. Corporations and Certain Associations Covered.**

4 ~~[(a) This chapter applies to:]~~

5 ~~[(1) labor organizations;~~

6 ~~(2) corporations that are organized under the Texas Business Corporation Act, the~~
7 ~~Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the~~
8 ~~Texas Non-Profit Corporation Law, federal law, or the laws of another state or~~
9 ~~nation; and~~

10 ~~(3) the following associations, whether incorporated or not, for purposes of this~~
11 ~~chapter are considered to be corporations covered by this chapter:~~

12 ~~(A) banks;~~

13 ~~(B) trust companies;~~

14 ~~(C) savings and loan associations or companies;~~

15 ~~(D) insurance companies;~~

16 ~~(E) reciprocal or interinsurance exchanges;~~

17 ~~(F) railroad companies;~~

18 ~~(G) cemetery companies;~~

19 ~~(H) government-regulated cooperatives;~~

20 ~~(I) stock companies; and~~

21 ~~(J) abstract and title insurance companies.]~~

22 ~~[(b)](a)~~ For purposes of this chapter, members of a corporation that does not have
23 stockholders ~~[and members of an association listed in subsection (a)(3) of this section]~~
24 are considered to be stockholders.

25 ~~[(c) This chapter does not apply to a political committee that incorporates for liability~~
26 ~~purposes only in accordance with subsection (d) of this section, provided that the sole~~
27 ~~principal purpose of the committee is accepting political contributions and making~~
28 ~~political expenditures.]~~

29 ~~[(d)](b)~~ A political committee may incorporate to limit its liability by providing in its
30 official incorporation documents that it is a political committee that is incorporating for

liability purposes only, and that its only principal purpose is to accept political contributions and make political expenditures.

~~§24.5. Corporate Loans.~~

~~(a) A corporation may not make a loan to a candidate, officeholder, or political committee for campaign or officeholder purposes unless:~~

~~(1) the corporation has been legally and continuously engaged in the business of lending money for at least one year before the loan is made; and~~

~~(2) the loan is made in the due course of business.~~

~~(b) This section does not apply to a loan to a political committee that supports or opposes measures exclusively.]~~

§24.15. Payments to a Corporation of the Candidate or Officeholder.

(a) If a corporation charges a candidate, officeholder, or specific-purpose committee for supporting or assisting a candidate or officeholder less than fair market value for goods or services in order to comply with §253.041(b) of the Election Code, the discount is not a prohibited corporate contribution.

(b) If the discount is greater than is necessary to comply with §253.041(b) of the Election Code, the discount is a prohibited corporate contribution if the discount is not otherwise authorized by this chapter.

§24.17. Corporate Expenditures for Get-Out-the-Vote Campaigns Permitted.

(a) An expenditure to finance a voter registration or get-out-the-vote drive is not a political expenditure if the drive encourages voting in general but does not encourage voting for or against a measure, candidate, officeholder, or political party.

~~(b) A corporation or labor organization is permitted to make an expenditure described in subsection (a) of this section.~~

~~[(c)](b)~~ A corporate or labor organization expenditure described by subsection (a) of this section is not reportable.

§24.18. Designation of Contribution for Administrative Purposes.

(a) Any of the following will serve to designate a political expenditure in the form of a political contribution made by a corporation or labor organization as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee:

(1) A contemporaneous written instruction that the contribution is restricted to the administration, maintenance, or operation of the committee accepting the contribution;

- 1 (2) The negotiable instrument conveying the contribution contains language
2 indicating that the entity is a corporation, including but not limited to "Inc.,"
3 "Incorporated," "Corp.," or "Corporation;"
- 4 (3) The general-purpose committee accepting the contribution reports the
5 contribution as monetary contribution or monetary support from a corporation or
6 labor organization on the committee's campaign finance report; or
- 7 (4) The general-purpose committee accepting the contribution deposits the
8 contribution into a separate segregated account for political contributions from
9 corporations and labor organizations.

10 (b) Subsection (a) of this section shall not be read to restrict a hybrid committee, a direct
11 campaign expenditure-only committee, or a political committee that supports or opposes
12 measures exclusively from using a contribution from a corporation or labor organization
13 to make a direct campaign expenditure.

14 **§24.19. Affidavit Required by a Political Committee Making a Direct Campaign**
15 **Expenditure from a Political Contribution Accepted from a Corporation or Labor**
16 **Organization.**

17 A political committee, including a direct campaign expenditure-only committee, must
18 include in its campaign treasurer appointment the affidavit described by ~~section~~
19 §252.003(a)(4) (relating to contents of a general-purpose committee's campaign treasurer
20 appointment) or 252.0031(a)(2) (relating to contents of a specific-purpose committee's
21 campaign treasurer appointment) of the Election Code, as applicable, before using a
22 political contribution from a corporation or labor organization to make a direct campaign
23 expenditure in connection with a campaign for an elective office.

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY THE COMMISSION.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. XXX

[Date]

ISSUE

May an incorporated out-of-state political committee that accepts corporate contributions contribute to Texas state and local candidates, including to a specific-purpose committee, provided it does so from a separate account that only accepts contributions from individuals and that would otherwise come from permissible sources under Texas law?

Second, assuming the contributions described under the facts above are permissible, does it matter if the out-of-state political committee is controlled by a non-candidate officeholder?

Third, if control by a candidate leads to the conclusion that the out-of-state committee is prohibited from making the contributions described above, would it be permissible for the out-of-state committee to: (i) contribute to a Direct Campaign Expenditure Only Committee or (ii) make direct expenditures itself? (AOR-727)

SUMMARY

The political committee may not make political contributions to Texas candidates because it accepts corporate contributions and is controlled by a Texas candidate and officeholder.

FACTS

The requestor is a politically-active organization that the requestor states meets the definition of a political committee (the Committee). The Committee incorporated for liability purposes only. The Committee is currently controlled by a non-federal Texas candidate and officeholder.

The Committee accepts corporate political contributions but maintains those contributions in a separate account from its non-corporate contributions. The Committee uses its corporate contributions to make direct campaign expenditures in states where corporate political contributions are prohibited and political contributions in states where corporate contributions are permitted.

The committee is not registered with the Federal Election Commission or any other state campaign finance regulator and files its regular contribution and expenditure reports with the Internal Revenue Service. The reports filed with the IRS disclose the committee's contributors.

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY THE COMMISSION.

The committee makes political expenditures in states other than Texas. The out-of-state committee will maintain its out-of-state political committee status by not making political expenditures in Texas that would exceed 20 percent of its overall political spending.

The requestor states if it is permitted to contribute to Texas candidates and specific-purpose political committees, the out-of-state committee would comply with the reporting requirements an out-of-state committee has with the TEC and provide the recipient committee with information it needs to comply with 1 Tex. Admin. Code §§ 22.7 and 20.29.

ANALYSIS

The Committee may not make political contributions to Texas candidates because it accepts corporate contributions and is controlled by a Texas candidate and officeholder.

An out-of-state political committee is a political committee that makes political expenditures outside this state and in the 12 months immediately before making of a Texas political expenditure makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. Tex. Elec. Code § 251.001(15).

The rules found in Chapter 253 of the Election Code related to the restrictions on contributions and expenditures applicable to political committees apply to out-of-state political committees, unless expressly exempted. *Id.* § 251.005 (expressly exempting out-of-state committees from the reporting rules of Chapter 252 and 254 of the Election Code, but not the Chapter 253 restrictions); *see also* § 253.031(e) (expressly allowing out-of-state committees to make political expenditures without appointing a campaign treasurer).

Generally, corporations may not make political contributions in Texas.¹ However, a political committee that has as its only principal purpose accepting political contributions and making political expenditures that incorporates for liability purposes only is not considered to be a corporation. Tex. Elec. Code § 253.092. The Committee appears to meet these requirements. Therefore, its corporate structure is not an impediment to it making political contributions to Texas candidates or political committees.

Texas law also allows general-purpose political committees to become a “hybrid committee.” *See* Tex. Elec. Code § 252.003(4); 1 Tex. Admin. Code §§ 20.1(22), 22.31. A hybrid committee shares attributes of both a conventional committee, which cannot accept corporate contributions but may contribute to candidates and officeholders and a direct campaign expenditure only committee, which may accept corporate contributions but may not contribute to candidates and officeholders. In essence, a hybrid committee is allowed to accept corporate contributions that it uses for direct campaign expenditures and keeps separate from its non-corporate contributions. *Id.*

Before a hybrid committee may accept a corporate contribution it must file an affidavit with its campaign treasurer appointment stating that “the committee is not established or controlled by a candidate or an officeholder,” and the committee will not use any political contribution from a

¹ The corporate contribution prohibition applies with equal force to labor organizations. Tex. Elec. Code § 253.094.

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY THE COMMISSION.

corporation to make a political contribution to a candidate, officeholder, or a non-hybrid or direct-campaign expenditure only committee. Tex. Elec. Code § 252.003(a)(4). A corporation is similarly prohibited from contributing to a political committee unless it files its affidavit declaring it will operate as a hybrid committee (or a direct campaign only committee). Tex. Elec. Code § 253.097.

The Committee is controlled by a non-federal Texas candidate and officeholder. Therefore, it could not complete the required affidavit stating that it is not established or controlled by a candidate or an officeholder. Therefore, the Committee may not permissibly accept political contributions from corporations and also make contributions to candidates or other conventional committees. *See id.*; Tex. Elec. Code § 253.097.

Since the Committee is controlled by a non-federal Texas candidate and officeholder, we do not reach the question of whether, if Committee was not candidate-controlled, whether an out-of-state committee must file a campaign treasurer appointment with the TEC to operate as an out-of-state hybrid political committee. Tex. Elec. Code § 253.097 (prohibiting a corporation from contributing to a political committee unless it files its hybrid committee affidavit “with the committee’s campaign treasurer appointment”).

The Committee may make direct campaign expenditures in Texas.

Although a corporation is prohibited from making contributions to candidates, officeholders, and certain political committees, it is free to make direct campaign expenditures. *Texans for Free Enter. v. Tex. Ethics Comm’n*, 732 F.3d 535, 538 (5th Cir. 2013) (*citing Citizens United v. FEC*, 558 U.S. 310, 340, 130 S. Ct. 876, 898 (2010)). Similarly, the Committee may contribute to direct campaign expenditure only committees. However, we caution that an expenditure by a candidate-controlled committee to benefit the candidate that controls the committee is a campaign contribution to the candidate, not a direct campaign expenditure.

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY THE COMMISSION.

ETHICS ADVISORY OPINION NO. xxx

September 17, 2025

ISSUE

Whether members of the State Employee Charitable Campaign Policy Committee are appointed officers required to file a Personal Financial Statement? (AOR-731)

SUMMARY

The State Employee Charitable Campaign Policy Committee is a state agency and the members are appointed officers as defined by Chapter 572 of the Government Code. Therefore, members of the SECC are required to file a Personal Financial Statement with the Commission.

FACTS

The requestor is a former member of the State Employee Charitable Campaign Policy Committee (SECC).

The SECC establishes the organization and structure of the state employee charitable campaign, determines eligibility for participation in the campaign, and ensures proper disbursement of funds received from the campaign. The SECC has disbursed \$195 million to various charities since its inception in 1993, including over \$2 million in the first campaign. *About SECC*, SECTEXAS.ORG, <https://www.sectexas.org/about-secc#three> (last visited August 25, 2025).

In a previous survey of state agencies, the TEC concluded that officers of the SECC were not required to file a Personal Financial Statement (PFS).

After the issuance of Texas Attorney General Opinion KP-0466 and Ethics Advisory Opinion 615, the TEC reevaluated many of the state agencies whose members had previously not been required to file a PFS. During the review of SECC, the TEC determined that its prior finding that SECC directors were not “appointed officers” was incorrect and notified the SECC that its officers would be required to file a PFS on a go-forward basis.

ANALYSIS

“State officers” are required to file with the TEC an annual account of personal financial activity known as a PFS. To determine whether an individual is a “state officer” requires the parsing of a nesting doll of terms defined in Chapter 572 of the Government Code.

The definition of “state officer” includes “appointed officer,” which is “an officer of a state agency who is appointed for a term of office specified by the Texas Constitution or a statute of the state.” *Id.* § 572.002(1)(C).

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Chapter 572 defines “[s]tate agency” to mean “a department, commission, board, office, or other agency that: (i) is in the executive branch of state government; (ii) has authority that is not limited to a geographical portion of the state; and (iii) was created by the Texas Constitution or a statute of the state[.]” Tex Att’y Gen. Op. No. KP-0466 (2024), *citing* Tex. Gov’t Code § 572.002(10)(A).

For the reasons stated below SECC members are required to file a PFS because they are appointed officers to SECC, which is a state agency.

The SECC is an executive branch state agency.

The SECC is administratively attached to the Comptroller’s Office in the executive branch. Tex. Gov’t Code § 659.140(e)(9), (e-1), .263. The SECC’s authority is not limited to a geographical portion of the state. *See* Tex. Gov’t Code § 659.140(e)(1) (directing the SECC to establish local campaign areas without regard to location and appoint managers for the local campaign areas). The SECC was created by Government Code Section 659.140, a Texas statute. *See* Tex. Gov’t Code § 659.140.

Accordingly, the SECC satisfies the definition of “state agency” for purposes of Chapter 572.

Members of the SECC are appointed officers of a state agency.

The members of the SECC are appointed by either the governor, the lieutenant governor, or the comptroller. Tex. Gov’t Code § 659.140(b). The members serve staggered two-year terms. *Id.* § 659.145(A-1). Therefore, the members are appointed officers under Section 572.002 of the Government Code.

As the members of the SECC are appointed officers of a state agency, they are required to file a PFS by April 30. This PFS must cover the financial activity that occurred during the portion of the previous year during which the member held office. *See* 1 Tex. Admin. Code § 40.3(a).

A state employee can be an appointed officer.

The state policy committee of the SECC “must be composed of employees and retired state employees receiving benefits under Chapter 814.” Tex. Gov’t Code § 659.140(c)(1).

The requestor states that since members of the SECC are state employees, they cannot be state officers.” The requestor asserts that an individual can never be simultaneously a state employee and a state officer because a “state employee” is defined as “an individual, *other than a state officer*, who is employed by a state agency.” Tex. Gov’t Code § 572.002(11)(A) (emphasis added).

The definition of a “state officer” includes an appointed officer. Tex. Gov’t Code § 572.002(12). The requestor reads the interaction of these two definitions as “state employees cannot be state officers.” However, the wording “other than a state officer” exempts salaried appointed officers from the definition of state employees, rather than meaning that being a state employee preempts being a state officer. *See* Tex. Gov’t Code § 311.011 (“Words and phrases shall be read in context and construed according to the rules of grammar and common usage.”)

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A state employee, barring a specific law to the contrary, is capable of being appointed to office outside the employee's duties as a state employee.

SECC committee members exercise sovereign functions

The TEC has previously found providing services, distributing funds, implementing policy, and engaging in adjudication or rulemaking to be examples of state agencies wielding authority. *See* Tex. Ethics Comm'n Op. No. 026 (1992). *See, e.g.,* Tex. Att'y Gen. Op. No. O-0384 (1939) (concluding that all persons who are publicly elected to their positions are officers within the meaning of Article 16, Section 30, of the Constitution, and of those persons obtaining their positions by appointment, only officers who are authorized by statute to perform governmental functions may be considered officers. All others are not officers, but mere employees).

The SECC oversees, by statutory authority, the disbursement of state funds to charitable organizations. Tex. Gov't Code § 659.140(e)(8)(B). Those funds total millions of dollars. *About SECC*, SECTEXAS.ORG, <https://www.secctexas.org/about-secc#three> (last visited August 25, 2025).

In addition, requestor states that SECC policy committee members are "at-will" state employees. However, this argument neglects the SECC policy member who is not a state employee, but a retired state employee. The "at-will" employment of some of the members does nothing to mitigate the fact that all the members have been granted authority by the enabling statute, and all the members are state officers.

The requestor believes that appointed state officers are always subordinate to and under the control of the state officials who appointed them. Even if that was true, the legislator nevertheless requires appointed officers to state agency to file PFSs. To accept this argument would narrow the requirement of the filers of PFSs to eliminate all appointed officers from filing requirements. Under the Code Construction Act, it is presumed that the entire statute is intended to be effective. Tex. Gov't Code § 311.021(2). A reading of the statute that eliminates the class of "appointed officer" under Chapter 572 does not give effect to the entire statute and thus cannot be correct.

SECC policy committee members are the kind of high-level state officials for which 572.021 was envisioned

The requestor points to the supremacy-of-text principle to argue, correctly, that the definition of "appointed officer" excludes regular state employees. The requestor also states that "the definition of 'state officer' ... separates regular state employees from those categories of state employees who are state officers who perform or administer very high-level areas of responsibility." The requestor then reiterated their argument that the SECC members are state employees, rather than state officers. As addressed above, just because the members of the SECC happen to also be state employees does not mean they are not state officers.

In the alternative, this argument neglects the fact that the SECC disburses state funds to charities. The disbursement of money is exactly the kind of exercise of discretion that differentiates a state officer from a state employee. Tex. Att'y Gen. Op. No. O-0384 (1939) ("[...] and of those persons obtaining their positions by appointment, only those are officers who are authorized by statute to perform government functions in their own right involving the exercise of discretion."). *See* Tex. Gov't Code § 659.140.

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Personal Financial disclosure by SECC members serves a public service.

The requestor states that “the personal financial affairs of a state employee have NO relevance to the committee business of selecting a slate of eligible charitable organizations to participate in the State Employee Charitable Campaign.”

Our conclusion that SECC members are required to file a PFS is a result of applying the plain text of the statutes without regard to a certain policy preference. However, Chapter 572 makes clear the policy justification for requiring state officers to file a PFS: “It is the policy of this state that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer’s or employee’s duties in the public interest.” Tex. Gov’t Code § 572.001(a).

As stated above, members of the SECC are state officers responsible for distributing large amounts of charitable funds. Disclosing activity such as financial holdings, board positions, and sources occupational income (including that of a spouse) has obvious relevancy to potential conflict of a person in charge of deciding the recipient of money.

The personal financial statement requirements work in concert with other conflict-of-interest provisions.

Finally, the requestor states that the conflict of interest provision specific to the SECC supplants other conflict of interest provisions such as the requirement to file a PFS. Section 659.140(d) of the Texas Government Code prohibits a person from being a member of the SECC if “the person or the person’s spouse is employed by or participates in the management or sits on the board of any entity or organization [...] that receives money through the state employee charitable campaign.”

But the SECC is not unique in being subject to layers of conflict-of-interest protections and it does not preclude them from filing a Personal Financial Statement. Members of the legislature are subject to conflict of interest provisions, and must also file a PFS. *See*, Tex. Const. art XVI, § 40(d). The interests of the public are defended in different ways by the different requirements and the two are not exclusive.

Prospective policy change

The requestor believes that the prospective application should apply to conduct requiring the filing of a PFS, rather than the actual filing of a PFS. *See* Tex. Ethics Comm’n Op. No. 615 (applying PFS reporting requirements to state officers who were not previously required to file prospectively only).

The requestor asserts that even if current SECC members are required to file a PFS, he is not, as he resigned his position effective in March 2025.

Prior to EAO 615, the members of the SECC were not provided notice of the requirement of an obligation to file a PFS and were not assessed late filing civil penalties for not filing. The determination, sent to the SECC on February 25, 2025, does not require filing PFSs for activity prior to 2024. Retroactive application of Ethics Advisory Opinion 615 would have the requestor

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filing PFSs for every year of service on the SECC, rather than only filing the PFS after the notice of the requirement to file.

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ETHICS ADVISORY OPINION NO. xxx

[Date]

ISSUE

Whether a member of the legislature may use campaign funds to reimburse lodging and meal expenses incurred in connection with officeholder duties during the interim if the member also receives a state per diem for that day of legislative work. (AOR-732)

SUMMARY

As the per diem is a salary, a member of the legislature may use campaign funds to reimburse lodging and meal expenses, provided that the expenses were incurred in conjunction with state business.

FACTS

The requestor is a member of the legislature. The requestor receives a state per diem for conducting certain state work during the interim between legislative sessions.

The requestor asks if campaign funds may be used to reimburse lodging and meal expenses in the interim even if requestor received a per diem for the day of legislative work during which the lodging and meal expenses were incurred.

ANALYSIS

Legislators are entitled to a per diem for each day of the regular and any special session. Tex. Const. Art. III, § 24.

Under House policy, during the interim “members of the House shall be entitled to claim the per diem rate for Austin in lieu of actual and necessary expenses incurred for meals and lodging.” House Travel Policy, at 21.

The Texas Supreme Court has held that the legislative per diem is a type of compensation to a legislator in consideration for all services rendered throughout his or her term. *Spears v. Sheppard*, 150 S.W.2d 769, 770 (Tex. 1941). Accordingly, a legislator is entitled to a per diem for each day of session, regardless of how many days the legislator attended. *Id.* A legislator is not required to provide evidence of actual expenditures to receive this per diem as compensation. *See id.*

The requestor asks whether political contributions can be used for lodging and meal expenses that are also “covered” by the legislative per diem in the interim. Since the legislative per diem is general compensation—not a reimbursement for specific expenses—it belongs to the legislator and can be put to whatever use the legislator pleases. Expenses related to meals or lodging for state

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business do not need to exceed the amount of the per diem before political contributions can be used to cover the expenses.¹

¹ We assume for the purposes of this opinion that the meals and lodging are ordinary and necessary expenses in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder and therefore not a personal use. Tex. Elec. Code § 253.035(d)(1).

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ETHICS ADVISORY OPINION NO. xxx

[Date]

ISSUE

Whether certain Public Service Announcements (PSAs) produced by a nonprofit corporation and featuring Texas state elected officials would trigger any campaign finance reporting requirements or require a political advertising disclosure statement. (AOR-733)

SUMMARY

The PSAs described by the requestor do not appear to be “in connection with an election” and therefore expenses for them would not constitute a campaign expenditure by the nonprofit or a contribution to the officeholders featured in the PSAs.

The PSAs likely would not require a political advertising disclosure statement because, as described by the requestor, the communications would not contain express advocacy. However, whether a communication is political advertising can only be answered when the communication is viewed as a whole and the communications at issue in this request do not yet exist.

Based on the facts presented, and assuming the PSAs would not meet the definition of political advertising, appearing in the PSAs does not provide a pecuniary gain or advantage to the officeholders. Therefore, being allowed to appear in a PSA does not appear to implicate the Chapter 36 gift restrictions.

FACTS

The requestor is nonprofit advocacy organization that is tax exempt under Section 501(c)(4) of the Internal Revenue Code. The requestor is considering producing PSAs in the form of paid broadcast, cable, satellite, and digital television/video and radio/audio ads. The PSAs would advertise the availability of Education Savings Accounts (ESAs) in Texas that were created by the recent enactment of Texas Senate Bill 2 (89th RS).

The PSAs would feature Texas state elected officials discussing the availability and key features of the ESA program and:

1. Would identify the participating officials by name and official title;
2. Would not mention any of the participating officials’ role in crafting, passing, or signing the ESA legislation into law;
3. Would not mention any of the participating officials’ personal support for the ESA program;

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4. Would not discuss or mention any of the participating officials' reelections or any of the electoral opponents;
5. Would be scripted and produced by the requestor, and the requestor would have ultimate editorial control over the ads;
6. Would range from 15 to 60 seconds in length;
7. The ads could stop running within 30 days before any contested election in which the participating officials are seeking reelection; and
8. Each ad could feature a variety of elected officials, and who would all be featured with roughly the same degree of prominence, rather than featuring one elected official exclusively.

The requestor states the PSAs would be entirely factual and focus solely on the already-enacted ESA program's features and how Texas parents could utilize the ESAs for their children's education expenses.

The requestor asks the Commission to confirm the requestor's understanding that these PSAs would not trigger any campaign finance reporting requirements or restrictions under the jurisdiction of the Commission.

ANALYSIS

Not all communications that feature an elected official are political advertisements. Likewise, not all costs associated with the production and publication of such communications are necessarily political expenditures or political contributions simply because an elected official appears in the communication.

However, it is not hard to imagine a putative "PSA" that features an elected official touting a legislative accomplishment that is broadcast in the weeks before a contested election that could be subject to no other reasonable interpretation than to urge election of the candidate.

After all, the foundational campaign finance cases involved courts attempting to draw the line between issue advocacy and electoral advocacy dressed up as issue ads designed to avoid the regulations applicable at the time. *See, e.g., Buckley v. Valeo*, [424 U.S. 1, 41, \(1976\)](#) (construing the term "relative to a clearly identified candidate...advocating the election or defeat of such candidate" to mean "expenditures for communications that in express terms advocate[d] the election or defeat of a clearly identified candidate"). The *Buckley* court introduced the so called "magic words" of express advocacy (such as such as "Elect John Smith" or "Vote Against Jane Doe") to draw a bright line between communications that were subject to federal campaign finance regulations and those that were not. [McConnell v. FEC](#), [540 U.S. 93, 126, 124 S. Ct. 619, 650 \(2003\)](#) (citing *Buckley*, 424 U.S. at 44 n.52) The Court clarified that a communication can be "marginally less direct" than using the *Buckley* magic words so long as its essential nature "goes beyond issue discussion to express electoral advocacy." *Massachusetts Citizens for Life*, 479 U.S. at 249.

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Later, the Court acknowledged “the most effective campaign ads, like the most effective commercials for products . . . , avoid the [*Buckley*] magic words [expressly advocating the election or defeat of a candidate].” [*McConnell v. FEC*, 540 U.S. 93, 127, 124 S. Ct. 619, 651 \(2003\)](#). Instead, federal regulations could reach ads that were “the functional equivalent of express advocacy” where the ad is “is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *Id.*; See also, *FEC v. Wis. Right to Life, Inc.*, [551 U.S. 449, 469-70, 127 S. Ct. 2652, 2667 \(2007\)](#). This general framework was adopted by the Texas Supreme Court and is reflected in the TEC’s rule defining the term “in connection with a campaign.” See *Osterberg v. Peca*, [12 S.W.3d 31, 51 \(Tex. 2000\)](#) (construing direct campaign expenditures to mean expenditures containing express electoral advocacy); Tex. Admin Code 20.1(8).

The difficult line drawing exercise in determining whether an ad is a political advertisement when it features an officeholder extolling a program that the officeholder may have made a central part of their political platform, is perhaps why some jurisdictions opted to pass PSA-specific legislation. E.g. RCW 42.17A.575 (2024); N.Y. Comp. Codes R. & Regs. tit. 19, § 940.

Texas law makes no specific distinction for PSAs. Instead, whether, and to what extent, campaign finance regulations apply to a third-party funding the creation and publication of a PSA that features an elected official will be decided with reference to the definitions in Texas law of “campaign expenditure,” “campaign contribution,” “officeholder contribution,” and “political advertising.” Tex. Elec. Code § 251.001(3), (4), (7).

Campaign Expenditure/Contribution

Broadly speaking, whether the cost associated with a communication is a political expenditure will turn on whether the cost was incurred “*in connection with a campaign* for elective office.” Tex. Elec. Code § 251.001(3) Similarly, a “campaign contribution” is a thing of value “offered or given with the intent that it be used *in connection with a campaign* for elective office or on a measure.” *Id.* 251.001 (7).

Under TEC rule, an expenditure for a communication “is made *in connection with a campaign* for an elective office” if the communication contains the *Buckley* “magic words” of express advocacy (e.g. “vote for,” “elect,” “support,” “vote against,” “defeat,”) related to a clearly identified candidate, regardless of when the communication is published relative to an election. 1 Tex. Admin Code § 20.1(18)(A)(i).

An expenditure for a communication that does not contain the *Buckley* magic words is nevertheless “in connection with a campaign” if the communication is:

- broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank;
- distributed within 30 days of a contested election for office sought by the candidate;
- targets a mass audience or group in the geographical area the candidate seeks to represent; and
- includes words, whether displayed, written, or spoken; images of the candidate or candidate’s opponent; or sounds of the voice of the candidate or candidate’s opponent that, without consideration of the intent of the person making the communication, are susceptible

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of no other reasonable interpretation than to urge the election or defeat of the candidate.

Id. § 20.1(18)(A)(ii).

A campaign contribution to a candidate or a political committee is also a campaign expenditure. *Id.* § 20.1(18)(A)(iv). It is a campaign contribution to provide a candidate the opportunity to appear in a communication that is “in connection” with their campaign. *See* Tex. Elec. Code § 251.001(8). Corporations are generally prohibited from making campaign contributions to candidates. *Id.* § 253.094.

The requestor states the PSA would not contain the *Buckley* magic words of express advocacy. The requestor also states that the ad could stop running within 30 days before a contested election. A communication, as described by the request, by a non-candidate or political committee that lacks the *Buckley* magic words is not a campaign contribution or campaign expenditure.

The requestor asserts that the PSAs described in his request also are not political expenditures or contributions even if the PSAs features an officeholder in a contested election and it is published within 30 days of the election. That is likely true.

The proposed PSAs would focus solely on the ESA program’s availability and features, would not mention any of the participating officials’ role in crafting, passing, or signing the ESA legislation into law and would not mention any of the participating officials’ personal support for the ESA program. Based on the requestor’s description, it does appear that the ESA would be susceptible to a reasonable interpretation other than to urge the election of a candidate—namely that parents of school-aged children should consider taking advantage of the ESA program. Therefore, the ESAs described in the request likely would not be “in connection with an election” and consequently not a campaign expenditure or campaign contribution.

However, we caution that it is not possible to say with perfect certainty an ad would be susceptible to no other interpretations but to urge the election or defeat of a candidate without seeing or hearing the ad or at least reading a script. Neither were provided with the request.

Officeholder Contribution

A corporation is prohibited from making an officeholder contribution to a candidate. *Id.* § 253.094.

“Officeholder contribution” means a contribution to an officeholder that is offered or given with the intent that is be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. Tex. Elec. Code § 251.001(4).

The requestor argued that the PSA related expenses are reimbursable with public funds, taking them outside of the definition of an “officeholder contribution.” We disagree that the expenses of the production and publication of the PSAs are reimbursable with public funds. Nevertheless, for a different reason we agree that the PSAs are not officeholder contributions.

The law creating the ESA program authorized the comptroller or comptroller’s designee to enter into contracts or agreements and engage in marketing, advertising, and other activities to promote, market, and advertise the development and use of the program. Tex. Educ. Code § 29.3535.

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The requestor appears to assert that because a specific type of government spending is allowed to promote the ESA program, then expenditures to promote the program are generally “reimbursable with public funds.” That is not so.

The law does not allow an unspecified “public official” to produce promotional materials for ESAs with a nonprofit corporation and then seek reimbursement from the state. Nor does a nonprofit advertising the ESA program in a way the nonprofit sees fit defray costs that would otherwise be incurred by the government, as the requestor suggests. Instead, the law allows “the comptroller” to “use money from the program fund to pay for activities authorized under this section.” *Id.* The planned expenditures do not appear to be reimbursable with public funds because the costs will not be authorized by the comptroller or the comptroller’s designee.

However, an “officeholder contribution” requires the contribution be used to “defray expenses that are incurred by the officeholder.” Tex. Elec. Code § 251.001(4). Here, the costs associated with producing and publishing the PSAs are not “incurred by the officeholder.” The requestor would bear the costs of production regardless of whether the officeholders participate. In this way it is distinguishable from an officeholder expense such as travel and lodging that covered by a third party that allows an officeholder to take a trip in connection with official duties. In the case of the trip, the transportation and lodging expenses are only incurred if the officeholder travels and therefore “incurred by the officeholder.”

Political Advertising

The requestor asks whether PSAs of the type described in the request would be considered political advertising and require a political advertising disclosure statement.

Political advertising published by a person other than a candidate, officeholder or political committee requires a disclosure statement if the advertising contains express advocacy. Tex. Elec. Code § 255.001.

The PSAs likely would not require a political advertising disclosure statement because, as described by the requestor, the communications would not contain express advocacy. *Id.* However, whether a communication is political advertising “can only be answered when the communication is viewed as a whole.” Tex. Ethics Comm’n Op. No. 476 (2007). Therefore, it is not possible to definitively answer this question without observing the actual communication.

The requestor asked the Commission to specifically address whether this conclusion would change depending on the timing of the released PSAs.

“Political advertising” means in relevant part “a communication supporting or opposing a candidate for nomination or election to a public office.” In some sense a communication that is temporally remote from an election is less likely to be support a candidate in that election. However, the timing of an election is just one factor in considering whether a communication supports a candidate for election or nomination.

The requestor also asked the Commission to specifically address whether this conclusion would change depending on whether the PSAs feature only one elected official or multiple elected officials. An advertisement that features more than one candidate is not necessarily less likely to be political advertising than an advertisement that features one candidate.

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Gift Restrictions

Finally, the requestor asks if the production and publication of the PSAs would trigger gift restrictions under Chapter 36 of the Penal Code or Chapter 305 of the Lobby Code.

The requestor presumes that the PSAs would not benefit the participating elected officials personally and therefore not implicate the gift laws.

Section 36.08 of the Penal Code broadly prohibits, with exceptions, a member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature from soliciting, accepting, or agreeing to accept any benefit from any person. Tex. Penal Code 36.08(f).

A “benefit” is “anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.” Tex. Penal Code § 36.01(3).

Based on the facts presented, and assuming the PSA would not meet the definition of political advertising, appearing in the PSA does not appear to provide a pecuniary gain or advantage to the officeholders. Therefore, being allowed to appear in a PSA does not appear to implicate the Chapter 36 gift restrictions.

Chapter 305 of the Government Code prohibits, with exceptions, a registered lobbyist or a person on the registrant's behalf and with the registrant's consent or ratification from offering, conferring, or agreeing to confer to a member of the legislative or executive branch a gift or series of gifts that in the aggregate exceed \$500 in a calendar year. Tex. Gov’t Code 305.024(a)(5).

There are no facts in the request to suggest the requestor is a registered lobbyist or acting on behalf of a registrant. Therefore, we do not reach this question. *See* Tex. Gov’t Code § 571.091; 1 Tex. Admin. Code § 8.5.

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ETHICS ADVISORY OPINION NO. xxx

[Date]

ISSUE

Whether a current State Board of Education (SBOE) member can provide continuing professional development to educators in return for compensation during their SBOE service. (AOR-734)

SUMMARY

Public servants may accept an honorarium for performing services if the public servant's official status was not a deciding factor in the decision to request the public servant to perform those services.

FACTS

Requestors are two members of the SBOE who wish to receive compensation for providing Continuing Professional Development to educators while serving on the SBOE.

ANALYSIS

The requestor asks if the standards of conduct laid out in Section 572.051(a)(2)-(3) of the Texas Government Code would apply in this situation.

A state officer or employee should not:

(2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
[or]

(3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgement in the performance of the officer's or employee's official duties.

Texas Gov't Code § 572.051(a)(2)-(3).

The requestor states that the SBOE infrequently enters executive session or handles confidential information that could apply to subsection (a)(2) but requested clarification regarding the application of subsection (a)(3) to SBOE members.

We have previously found potential for impairment of independence or judgement of a state officer for: 1) accepting subscription fees for a website which compiles information about trainings regulated by the agency at issue; 2) a member of a licensing board offering courses in a private

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capacity for board licensees; and 3) testifying as an expert witness on whether a person had committed a violation of laws, rules, or standards within the jurisdiction of the state agency the officer worked for. Tex. Ethics Comm'n Op. Nos. 534 (2016), 318 (1996), 492 (2010). The listed activities were found to "intertwine the private interest of the board member in promoting his professional expertise with the [regulatory] interests" of the agency they worked for. Tex. Ethics Comm'n Op. No. 318 (1996).

The SBOE adopts rules, curriculum, and guidelines for public education. *See* Tex. Educ. Code § 7.102. The licensing of educators is handled by the Texas Education Agency. *See id.* § 7.021. There are no facts in the request to suggest the people offering compensation to the requestors have any interests before the SBOE. Therefore, Texas Government Code Section 572.051(a)(3) would not prohibit members of the SBOE from performing continuing education services.

However, in addition to the provisions of chapter 572 of the Government Code, certain Penal Code provisions are relevant to this opinion request.

A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

Penal Code § 36.07(a).¹ "Thus, an honorarium is permissible as long as the public servant's official status was not a deciding factor in the decision to request the public servant to perform the services at issue." Tex. Ethics Comm'n Op. No. 305 (1996).

The Texas Ethics Commission cannot adjudicate disputed facts in an Advisory Opinion. 1. Tex. Admin. Code § 8.3(d). Therefore, the requestors will have to ask themselves: Am I being asked to provide Continuing Professional Development because of my knowledge or skills or because of my position?

We acknowledge that it is difficult to untangle those two things, especially as they hinge on the motivation of a third party. In a previous Advisory Opinion, it was suggested that a way to analyze whether the acceptance of an honorarium was acceptable was to ask: "Would my services be useful or desirable if I did not hold a position with the government?" "What do they want from me?" "What do they want from my board or agency?" *See* Tex. Ethics Comm'n Op. No. 305. It is also important to be cognizant of whether someone is seeking or is likely to seek some official action from the public servant or the public servant's governmental entity in order to guard against the appearance of quid-pro-quo corruption.

¹ Previous opinions have determined that payments for speaking and teaching are included in the term "honorarium." Tex. Ethics Comm'n Op. Nos. 173, 148, 125 (1993), 17 (1992).

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ETHICS ADVISORY OPINION NO. xxx

[Date]

ISSUE

Whether the TEC has authority to assess a civil penalty for a late personal financial statement filed by a director of the Harris County-Houston Sports Authority (“HCHSA” or “the board”)? (AOR-735)

SUMMARY

An HCHSA director must file a PFS with the Texas Ethics Commission and is subject to a civil penalty imposed by the TEC for an untimely filed PFS as if the director were a state officer.

FACTS

The requestor was appointed to the board of directors of HCHSA in 2024.

Under the Local Government Code, a director of HCHSA is required to file a PFS with the TEC and HCHSA. Tex. Local Gov’t Code 335.1085(a).

The requestor was notified by HCHSA staff of the filing requirement on April 30, 2025, and did not file a PFS with the TEC.

The TEC sent the requestor notice of late report, informing the requestor of the \$500 penalty for failure to file. The requestor contested the civil penalty, and submitted this advisory opinion request to resolve the question of whether an HCSCA director, although required to file a PFS with the TEC, is nevertheless not subject to a civil penalty for failing to file it.

ANALYSIS

The TEC is required to determine if an individual required to file a PFS “under” Subchapter B of Chapter 572 of the Texas Government Code) failed to file the PFS on time, and if so, assess a \$500 civil penalty. Tex. Gov’t Code § 572.033 (“The commission shall determine from any available evidence whether a statement *required to be filed under this subchapter* is late.”) (emphasis added).

Directors of HCHSA are required to file a PFS with *both* the board and the TEC Local Gov’t Code § 335.1085(a). The director’s requirement to file a PFS comes from the Local Government Code, rather than Subchapter B of Chapter 572. *Id.* The TEC’s sanctioning authority is limited to a PFS filed under Subchapter B. Tex. Gov’t Code § 572.033. However, the Local Government Code

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applies the whole of Subchapter B—which includes a TEC-imposed sanction—to an HCHSA director “as if the director were a state officer.” *Id.*¹

The text of the Local Government Code plainly states that the whole of Subchapter B applies to an HCHSA director. Since all of Subchapter B applies to a HCHSA director, and Subchapter requires the TEC to assess a civil penalty if a PFS is filed late, it follows that an HCHSA director is assessed a civil penalty if the director files a PFS with the TEC late.

The HCHSA is not the only political subdivision to which the Legislature imposed PFS duties outside of Subchapter B. *See, e.g.*, Transportation Code § 370.2521 (directors of regional mobility authorities); Tex. Spec. Dist. Local Laws. Code § 7201.056 (Agua Special Utility District); Tex. Ins. Code 463.057 (Texas Life and Health Insurance Guaranty Association). In some, but not all occasions, the Legislature applies all of Subchapter B to the filer as if the filer were a state officer.

For instance, commissioners of Port of Corpus Christi Authority of Nueces County are required to file a PFS with the TEC but are not subject to late filing civil penalties assessed by the TEC. Rather than applying all of Subchapter B to the port commissioners, the Legislature imposed the following obligation: “. . . a port commissioner shall file with the Texas Ethics Commission a financial statement that complies with Sections 572.022-572.024, Government Code.” Tex. Spec. Dists. Code § 5016.0053.

The port commissioners are not subject to the late filing civil penalty found in Section 572.033 because the Legislature chose not to apply that section to them by specific reference or by applying all of Subchapter B. Consequently, the port commissions are not issued a civil penalty for late reports by the TEC. But the commissioners also miss out on some of the benefits afforded to reports filed under Subchapter B, such as having certain personal information redacted before public inspection and the ability to receive an extension to file. 2021 Tex. Ag. Ltr. Rul. LEXIS 19520.

The same is true of Texas Life and Health Insurance Guaranty Association board members who must “file with the Texas Ethics Commission a financial statement as provided by Subchapter B, Chapter [572](#), Government Code.” Ins. Code § 463.057. The Insurance Code does not apply all Subchapter B to the board members as if they were a state officer. Instead, the law simply requires that they *file* as provided by Subchapter B. Such a statute does not import the sanctioning authority of Section 572.033.

¹ The statute reads in whole:

Sec. 335.1085. FILING OF FINANCIAL STATEMENT BY DIRECTOR.

(a) A director shall file the financial statement required of state officers under Subchapter [B](#), Chapter [572](#), Government Code, with:

- (1) the board; and
- (2) the Texas Ethics Commission.

(b) Subchapter [B](#), Chapter [572](#), Government Code:

- (1) applies to a director as if the director were a state officer; and
- (2) governs the contents, timeliness of filing, and public inspection of a statement filed under this section.

(c) A director commits an offense if the director fails to file the statement required by this section. An offense under this section is a Class B misdemeanor.

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Unlike the port commissioners or Life Insurance Guaranty Association members, the Legislature applied all of Subchapter B to HCHSA members as if they were state officers. State Officers are subject to a later filing penalty under Subchapter B. As such, a HCHSA member is required to file a PFS with the TEC and is subject a civil penalty to late filing “as if the director were a state officer.”²

² Regardless of the TEC’s ability to assess a fine for failure to file, the requestor is still required to file a PFS with the TEC by April 30 of each year. Tex. Local Gov’t Code § 335.1085(a)(2). As the requestor was appointed in 2024, he was required to file a PFS with the TEC on April 30, 2025. In addition, as the requestor did not resign until after January 1, 2025, he is also required to file a PFS with the TEC on April 30, 2026. *See* 1 Tex. Admin. Code § 40.3. The civil penalty “is cumulative of any other available sanction for late filing of a sworn complaint.” Tex. Gov’t Code § 572.033(c). Failure to file these PFSs is a Class B misdemeanor. Local Gov’t Code § 335.1085(c).